

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Telecommunications Services) CS Docket No. 95-184
Inside Wiring)
Customer Premises Equipment)

In the Matter of)
Implementation of the Cable)
Television Consumer Protection) MM Docket No. 92-260
and Competition Act of 1992:)
Cable Home Wiring)

To: The Commission

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REPLY COMMENTS OF MULTIMEDIA DEVELOPMENT CORP.

MultiMedia Development Corp. ("MultiMedia"), by its attorneys, hereby submits these Reply Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 95-504, released January 26, 1996, 61 Fed. Reg. 3657 (1996), in CS Docket No. 95-184, and First Order on Reconsideration and Further Notice of Proposed Rule Making ("Further Notice"), FCC 95-503, released January 26, 1996, 61 Fed. Reg. 6210 (1996), in MM Docket No. 92-260, as captioned above.¹

¹ MultiMedia operates wireless cable television systems in the Albuquerque, Las Cruces and Santa Fe markets in New Mexico and currently serves 8,000 subscribers. MultiMedia also is the high

Introduction

As set forth in MultiMedia's Comments filed in these proceedings,² MultiMedia supports the Commission's initiatives in the two rule making proceedings to comprehensively review the cable television home wiring rules, the telephone inside wiring rules, and other Commission rules and policies which may affect communications services and the expected convergence of multichannel video, telephone and other communications delivery systems.

MultiMedia has demonstrated how the market for multichannel video services is greatly handicapped by "mandatory access" laws in some states which grant multiple dwelling unit ("MDU") building access as a matter of right to franchised cable television operators but not to other competing multichannel video program distributors ("MVPDs"). Inasmuch as these laws unjustifiably discriminate against non-franchised MVPDs, are inconsistent with express federal policy favoring facilities-based competition and stand virtually no likelihood of elimination at the state and local level, MultiMedia urged the Commission to preempt them.

The cable home wiring rules must provide customers to the fullest extent possible the ability to freely change from one MVPD to another in the marketplace. MultiMedia has urged the Commission

bidder for eight (8) Basic Trading Areas in New Mexico such that it has rights to provide service to nearly the entire state.

² See Comments of MultiMedia filed in CS Docket No. 95-184 and MM Docket No. 92-260 on March 18, 1996 ("MultiMedia Comments").

to harmonize the cable home wiring rules with the telephone inside wiring rules, which provide a practical and proven model for defining the point of demarcation.

Discussion

These proceedings are about one thing: competition. On one hand, the comments clearly demonstrate that wireless cable operators, telephone interests, consumer groups and consumer equipment manufacturers simply seek rational rules designed to foster real competition in the multichannel video services marketplace as well as in other telecommunications services. On the other hand, to the surprise of no one, cable television interests forcefully support retention of the present cable home wiring rules. This position is an all too obvious effort on behalf of the cable industry to perpetuate federal, state and local protection of access rights, inalienable and sole rights of ownership of bottleneck facilities and, in sum, an insurance policy against competitors that can (and will) offer consumers higher quality services at lower rates and, most importantly, a choice. MultiMedia seeks only fairness, and is content to take its chances in a fair and equitable marketplace.

The cable industry's position is as transparent as it is anti-competitive. The National Cable Television Association, Inc. ("NCTA") characterizes the Commission's initiatives as a "propos[al] to dilute its cable home wiring regulations" through a "patently anticompetitive proposal" in which "the

telephone/wireless industries now seek another avenue to confiscate a cable operator's facilities."³ The Cable Telecommunications Association ("CATA") complains of the Commission's "unseemly predisposition to change the telecommunications structure to fit its own peculiar vision"⁴ with a "government sponsored charade"⁵ which could in some cases lead competitors to "within hours acquire a cable system's distribution facilities while at the same time putting the cable system out of business."⁶ Simply put, cable operators like the Commission's cable home wiring rules, for the most part, just the way they are.

The notion that existing cable systems -- which continue to retain near monopolies in multichannel video distribution in most local markets -- are being railroaded into ruin by "telephone/wireless" interests and by the Commission's proposals is preposterous, and the cable companies attempt to twist the facts is self-serving.

For instance, CATA declares that "[r]eal competition can only be achieved if multiple providers offer their own wires to

³ Comments of the National Cable Television Association, Inc. in MM Docket No. 92-260 ("NCTA Docket 92-260 Comments") at 1-2. See also Comments of the National Cable Television Association, Inc. in MM Docket No. 95-184 ("NCTA Docket 95-184 Comments") at 3-4, 7-9, 17, 29.

⁴ Comments of the Cable Telecommunications Association in CS Docket No. 95-184 ("CATA Docket 95-184 Comments") at 12 n.4.

⁵ Comments of the Cable Telecommunications Association in MM Docket No. 92-260 ("CATA Docket 92-260 Comments") at 2.

⁶ CATA Docket 95-184 Comments at 6.

consumers."⁷ In the real world, many cable subscribers do not have their own dedicated wiring allowing unfettered free choice among providers. Existing video system architecture inside most MDU buildings involves the use of some common wiring.

Under present FCC rules, cable systems are not required to ever surrender ownership or control of MDU common inside wiring. Cable interests attack the Commission's proposal to divest them of this complete control as well as the Commission's proposals to modify the wiring demarcation points. NCTA complains, for example, that if so-called loop-through wiring can be transferred to the property owner by a vote of subscribers, "the subscribers' wishes will be subordinated to the owner who will have the real power to decide which provider serves the building" and the MDU building owners "will summarily evict incumbent cable operators" with a result bearing "little relationship to the choice of residents."⁸ CATA questions whether the "best interests of the subscribers have been satisfied" when "a building owner's palm is crossed with silver."⁹

The hyperbole aside, where MDU subscribers cannot for technical or aesthetic reasons exert individual powers of choice among competitors, basic common sense suggests the interests of the building owner, not the incumbent cable operator, more closely

⁷ CATA Docket 95-184 Comments at 4.

⁸ NCTA Docket 92-260 Comments at 2. See also NCTA Docket 95-184 Comments at 15-21.

⁹ CATA Docket 92-260 Comments at 5.

match the interests of subscribers.¹⁰ As urged by MultiMedia¹¹ and others in this proceeding,¹² the Commission should adopt a two-tiered demarcation point for MDU buildings with common wiring and give the MDU property owner the disposition and other rights over such wiring.¹³

NCTA complains that altering the present rules "will undo years of work at the state level to gain lawful access to premises in order to present customers with genuine choice."¹⁴ Here again, the cable operators' argument departs from reality. As MultiMedia explained in its Comments, much of the cable lobby's "years of work at the state level" has resulted in mandatory access laws that in

¹⁰ As MultiMedia has detailed in its Comments, the incumbent cable operator seeks to maximize its profit and market power, while a condominium association or landlord seeks to provide the best possible living environment at the most reasonable cost. Taking into consideration market forces and the aesthetic and practical limitations of an MDU property, MDU property owners generally are compelled to provide residents with the broadest possible range of services. As concerns MVPD services, MDU property owners are uniquely situated to serve residents' interests in bargaining with MVPDs insofar as they have market power to derive extra value from an MVPD through discounts, bulk pricing or other arrangements. See MultiMedia Comments at 14-16.

¹¹ MultiMedia Comments at 13-16.

¹² See, e.g., Comments of the Wireless Cable Association International, Inc. in CS Docket No. 95-184 and MM Docket No. 92-260 ("WCAI Comments") at 5, 21-22.

¹³ MultiMedia also urges the Commission to modify its rules to provide that title to cable home wiring be passed to the subscriber (or property owner in the case of MDU building common wiring) at the time of installation of cable home wiring, at least with respect to future installations. See MultiMedia Comments at 16-19.

¹⁴ NCTA Docket 92-260 Comments at 4. See also NCTA Docket 95-184 Comments at 15.

many states unfairly discriminate between franchised cable systems and other MVPDs, ensure that their monopolistic powers will be perpetuated and thus prevent free choice. Because such discriminatory laws substantially undermine competition in multichannel video services, MultiMedia¹⁵ and others in this proceeding¹⁶ have urged the Commission to invoke its authority to preempt them.¹⁷

CATA complains that "while the Commission's proposed rules would permit a competitor to acquire use...of wiring on the subscriber side of wherever the demarcation point may be set, there are certainly no rules that provide a mechanism for a cable system ever re-acquiring the wiring."¹⁸ Again, big cable simply misses the point. Once a truly competitive market is established where customers may move from one MVPD provider to another, there should be no "rules" or other "mechanisms" which guarantee future recapture of lost customers. Where customers have choice, cable systems, just like every other MVPD, can only recapture lost business by learning to be competitive in the marketplace.

¹⁵ MultiMedia Comments at 3-7.

¹⁶ See, e.g., WCAI Comments at 6-10, 15.

¹⁷ CATA argues disingenuously that "before the Commission even considers pre-empting [sic] use of cable already installed in MDUs, it should request the Congress to adopt a uniform federal access law." CATA Docket 95-184 Comments at 9-10. Regardless of the merits of such federal legislation, CATA's urging that the Commission do nothing on this issue except petition Congress is yet another attempt to preserve the status quo favoring incumbent cable operators.

¹⁸ CATA Docket 95-184 Comments at 5 n.1.

NCTA also argues that if incumbent cable operators are displaced by MVPD competitors in MDU buildings "the cable operator will lose its ability to market alternative or supplementary services such as telephony, Internet access, pay-per-view [and] interactive services."¹⁹ But NCTA overlooks the likelihood that other MVPDs in the converging telecommunications marketplace will offer such services, either independently or through collaboration with other service providers such as telephone alternative access providers.²⁰

Cable operators also question whether the Commission has authority to prescribe demarcation points and regulate the disposition and use of MDU common wiring.²¹ This matter has previously been addressed by the Commission in MM Docket No. 92-260, and NCTA and CATA present no new legal arguments supporting their position. As MultiMedia has set forth in its Comments, the Commission's proposals are indistinguishable from -- and no more a "violation" of the property rights of an incumbent MVPD than --

¹⁹ NCTA Docket 92-260 Comments at 4. See also NCTA Docket 95-184 Comments at 7-8, 22-23.

²⁰ Some wireless cable operators have, in fact, been in the vanguard of developing and providing alternative and supplementary services to enhance their competitiveness in marketplaces dominated by conventional cable systems.

²¹ NCTA Docket 95-184 Comments at 2, 3, 9-15, 27 n.39, 28, 29 n.40, 36-38; CATA Docket 92-260 Comments at 2-4; CATA Docket 95-184 Comments at 2-3, 7-8, 13-14. See also Comments of Telecommunications, Inc. in MM Docket No. 92-260 and CS Docket No. 95-184 at 2-4; Comments of Time Warner Cable in MM Docket No. 92-260 at 3-4, 7; Comments of Time Warner Cable and Time Warner Communications in CS Docket No. 95-184 at 7-9, 11-17, 26-29.

existing rules granting such rights to subscribers for subscriber wiring.²²

Lastly, CATA urges that "[b]efore attempting new policy in this area the Commission should determine the likelihood of RF leakage that might caused" by subscriber access to wiring.²³ As CATA itself recognizes, however, "in practice many subscribers routinely engage in" alteration of their cable home wiring.²⁴ CATA does not offer any showing of how subscribers' exercise of domain over wiring has or will cause leakage problems of any consequence.

²² MultiMedia Comments at 14 n.21. See also WCAI Comments at 16-18, 20. MultiMedia disagrees with the assertions of NCTA and CATA that Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") and the Telecommunications Act of 1996 or other statutory language limits the Commission's regulatory authority over cable home wiring. NCTA Docket 92-260 Comments at 2-3, 4 n.4; NCTA Docket 95-184 Comments at 2, 9-15, 27 n.39, 28, 29 n.40; CATA Docket 92-260 Comments at 4; CATA Docket 95-184 Comments at 2, 3-4. Section 16(d) of the 1992 Cable Act merely sets forth the bare minimum requirements for cable home inside wiring rules and serves as a starting point for Commission regulation, while the Telecommunications Act of 1996 (the "1996 Act") is silent on the matter of cable home wiring regulations, and in Section 652 speaks only of limitations on the temporary sharing of cable system-owned wiring to the subscriber with the local telephone company. Were it the intent of Congress to limit matters relating to the control and ownership of such wiring as between MVPD and subscriber, the 1996 Act surely would have addressed it in Section 652 or otherwise. The 1996 Act does not. With the enactment of the 1996 Act, the time is ripe for the Commission to move its cable home wiring rules beyond the "cable services" focus of 1992 and towards a model which will serve the future and the inevitable "convergence" of telephone, data and video technologies. See MultiMedia Comments at 8-10; WCAI Comments at 2, 4, 18-22.

²³ CATA Docket 95-184 Comments at 11. See also NCTA Docket 95-184 Comments at 24-25.

²⁴ CATA Docket 95-184 Comments at 10. See also NCTA Docket 95-184 Comments at 24 n.34.

MultiMedia²⁵ and others²⁶ have noted that the existing signal leakage rules adequately protect the public and there is no evidence to indicate that the proposed changes to the cable home wiring rules will undermine this function.


Conclusion

For the reasons stated above and in its Comments previously filed, MultiMedia Development Corp. urges the Commission to exercise its authority to preempt state and local mandatory access regulations which discriminate against particular MVPDs and revise its cable home wiring rules to follow the Commission's preexisting and proven rules regarding telephone inside wiring, taking into account the different technological and architectural limitations of present video coaxial cable distribution systems.

Respectfully submitted,

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²⁵ MultiMedia Comments at 19-20.

²⁶ See, e.g., WCAI Comments at 22-23.